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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,213	11/18/2003	Joel M. WasDyke	1001.1701101	4826

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EXAMINER

WEBB, SARAH K

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/716,213

Applicant(s)

WASDYKE, JOEL M. 

Examiner

Sarah K Webb

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/26/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 8,9,20,21,28 are objected to because of the following informalities: the limitation "the base of the filter" in claims 8,9,20,21 is not clear, because the base is not defined. Claim 28 should have a range of "3 to 5 days." Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1,7,9,13,19,21,26 are rejected under 35 U.S.C. 102(e) as being anticipated by US 2003/0208227 (Thomas).

Thomas discloses a filter in Figure 1A formed by a plurality of legs (12) connected at their proximal ends to an apical head (12-1) and a plurality of support members (22) connected to the distal ends of the filter legs (12). The support members include a biodegradable material [0021-0023] and are oriented towards the distal end of the filter, which was interpreted to be "*away from the base.*" Thomas lists a variety of bioabsorbable materials for the support members.

### ***Claim Rejections - 35 USC § 103***

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6,8,10-18,20,22-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,267,776 to O'Connell in view of US Patent No. 6,007,558 to Ravenscroft et al. and as evidenced by US Patent No. 5,980,564 to Stinson.

O'Connell discloses an intravascular filter in Figure 19 that includes a plurality of filter legs (202) that are connected at their proximal ends to an apical head (206). Figure 13 illustrates an apical head (106) more clearly. O'Connell explains that the apical head (106,206) is formed from a biodegradable material so that the filter legs can be released to a stent-like configuration over time without a second invasive procedure (column 8, lines 26-36). The biodegradable material can be PLA or PGA (col.8, line 28), which applicant lists on page 9 of the specification as suitable materials for degrading within a predetermined period of time. Stinson states that PGA can be reabsorbed within a few days or weeks (column 3, lines 35-40). Further, O'Connell states that filter legs can be biodegradable (column 14, lines 7-30).

O'Connell fails to include support members as part of the bioabsorbable centering means. Ravenscroft discloses another filter device in Figure 1 that is formed with a plurality of legs (26) connected to an apical head (12). Ravenscroft teaches that a filter of this structure should include support members (22) connected to the apical

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head (12) for centering the filter device (column 4, lines 6-9). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include support members connected to the centering cap of O'Connell, as Ravenscroft teaches that this structure helps to center the filter device. Since the support members are connected to the bioabsorbable cap and would no longer be needed when the device deploys to a stent-like configuration, it would be obvious to form them from the same bioabsorbable material, especially considering that O'Connell teaches that it is possible to have biodegradable leg members (column 14).

O'Connell states that biodegradable members can be self-opening (column 14, line 9), and Ravenscroft forms the entire filter device of self-expanding materials, including plastic (column 3, lines 27-50).

Regarding claim 13, the centering support members have first ends secured to the filter legs by way of the cap, and the other ends are directed outwardly. The support members were considered to be directed "*towards the base.*"

### **Conclusion**

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 6,506,205 (Goldberg) discloses a removable centering element that includes support members connected to a cap.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah K Webb whose telephone number is (703) 605-1176. The examiner can normally be reached on Mon-Fri 8-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhthuan T. Nguyen can be reached on (703) 308-2154. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SKW  
09/01/04



DAVID O. REIP  
PRIMARY EXAMINER